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DEC 26 1972

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1972
No. 72-~~5228~~ 5782

ERVIN HOHENSEE,
Petitioner

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
and
PENNSYLVANIA POWER AND LIGHT COMPANY,
Respondents

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.

BRIEF OF RESPONDENT, PENNSYLVANIA PUBLIC UTILITY COMMISSION IN OPPOSITION

PETITION NOT PRINTED

REPLY BRIEF NOT PRINTED

ANTHONY L. MARINO
Assistant Counsel
EDWARD MUNCE
Assistant Counsel
PHILIP P. KALODNER
Counsel
Attorneys for Pennsylvania Public Utility Commission, Respondent

North Office Building
Harrisburg, Pennsylvania 17120

Murrelle Printing Co., Law Printers, Box 100, Sayre, Pa. 18840

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STATUTE:

Act of General Assembly of the Commonwealth of Pennsylvania, approved May 5, 1933, P. L. 364, Sec. 322, as amended, 15 Purdon's Pennsylvania Statutes Annotated, Sec. 1322 1

BRIEF OF RESPONDENT, PENNSYLVANIA PUBLIC UTILITY COMMISSION, IN OPPOSITION

This is one of two companion cases instituted by Pennsylvania Power and Light Company (PP&L) which filed applications with the Pennsylvania Public Utility Commission (Commission) seeking approval of the exercise of the power of eminent domain for the construction of an electric transmission line over lands in Lackawanna County, Pennsylvania.

Record title to the lands here involved was in two corporations. The present Petitioner asserted ownership informally, but he rejected the invitation to offer evidence of his claim under oath. Nevertheless he was accorded full latitude at several hearings to present himself and his case.

The applications filed with the Commission were filed pursuant to the Act of General Assembly of the Commonwealth of Pennsylvania, approved May 5, 1933, P. L. 364, §322, as amended, 15 Purdon's Pennsylvania Statutes Annotated, §1322. That section requires a finding on the part of the Commission —before issuing a certificate of public convenience —that the service to be furnished through the exercise of the power of eminent domain is necessary or proper for the service, accommodation, convenience or safety of the public.

The Commission approved the instant application by Order of March 8, 1971 at the proceeding docketed

A. 95845. Appeal therefrom was taken to the Commonwealth Court of Pennsylvania, which quashed the appeal (3 Commonwealth Ct. 390) (1971). Appeal therefrom was tardily sought to the Supreme Court of Pennsylvania. The Petition for Allowance of Appeal, Nunc Pro Tunc, from the judgment of the Commonwealth Court, was denied June 13, 1972, by per curiam order of the Supreme Court of Pennsylvania. Petition for Reconsideration of the foregoing order was denied August 29, 1972 by a per curiam order of the same Court.

Under the applicable statutes of Pennsylvania, the Commission does not grant the *power* to condemn. An applicant already possessing such power cannot exercise it in the local Court unless and until the Commission has found that the proposed electric transmission line is necessary. In the instant case, the Commission approved the application on the merits only after full hearing.

The pending Petition submitted to your Honorable Court is entirely inapposite to the matter at hand and presents no justiciable controversy or any federal question. It should therefore be denied.

Respectfully submitted,

ANTHONY L. MARINO
Assistant Counsel
EDWARD MUNCE
Assistant Counsel
PHILIP P. KALODNER
Counsel
Pennsylvania Public Utility
Commission, Respondent.